IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 364

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware,

Petitioners,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTEE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

LEE MCCANLISS,
Attorney for Petitioner.

B. S. WOMBLE, Winston-Salem, N. C.,
C. CLIFFORD FRAZIER, Greensboro, N. C.,
RUSSELL M. ROBINSON, Greensboro, N. C.,
MARION W. SMITH, New York, N. Y.,
Of Counsel.

INDEX

Table of Cases Cited

Table of Textbooks Cited

Table of Statutes Cited

(The references to the North Carolina statutes are to the Consolidated Statutes.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No.

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware,

Petitioners,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari be issued to review a judgment of the United States Circuit Court of

Appeals for the Fourth Circuit, which by a divided court affirmed in part and reversed in part a decree of the District Court of the United States for the Middle District of North Carolina.

Opinions Below

The opinion of Judge HAYES in the District Court (R. 132) is reported in 46 F. Supp. 510. The majority opinion of Judge PARKER (R. 263) and the dissenting opinion of Judge SOPER (R. 287) in the Circuit Court of Appeals are reported in 136 Fed. 2nd 849.

Jurisdiction

The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. Section 347) to review the Judgment of the Circuit Court of Appeals dated June 19, 1943.

Statutes Involved

The statute involved is Section 34 of the Judiciary Act of 1789, now found in 28 U. S. C. Section 725, as construed in *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64.

The North Carolina statutes, which the Circuit Court of Appeals failed to follow, are set forth in the Appendix hereto.

Summary Statement of the Matter Involved

A. Nature of the Suit.

This is a civil action brought in the federal court for the delivery of a legacy. Jurisdiction is based solely on diversity of citizenship (Finding 31). The action was begun on June 25, 1941 (Finding 32), and was tried before Honorable JOHNSON J. HAYES, United States District Judge, without a jury.

The plaintiffs (respondents herein) are three individuals and certain corporations affiliated with the Presbyterian Church in the United States. Said individuals are Trustees of the First Presbyterian Church of Greensboro, N. C., but sue solely as alleged Trustees of an express trust under Item Fifth of the will of the late Lunsford Richardson, Sr. The said corporations sue as alleged beneficiaries thereunder.

The petitioners herein are the two surviving executors of the said will (they are not sued individually) and the Vick Chemical Company, a Delaware corporation incorporated in 1933.

The respondents alleged that the late Lunsford Richardson, Sr., who died August 19, 1919, domiciled in Greensboro, North Carolina, by Item Fifth of his will established a charitable trust in favor of themselves and others similarly situated. The legacy in question consisted of a remainder interest in 3/100 of the stock of Vick Chemical Company (incorporated in North Carolina in 1919). The respondents alleged that 225 shares of this stock were wrongfully sold in 1921 in a probate proceeding in the Superior Court of Guilford County, North Carolina. Further, they alleged that the remainder interest in another 225 shares of such stock was wrongfully sold by the respondent Trustees to the testator's widow in 1923 for the sum of $45,000.

The Trial Court held that the 1921 sale of the first 225 shares of such stock to raise cash to pay debts was valid and the Circuit Court of Appeals affirmed. No question is raised in this petition with respect to that sale.

With respect to the second 225 shares the Trial Court held that the testator did establish a charitable trust by Item Fifth of his will and that the sale of the remainder interest therein by the respondent Trustees to the testator's widow was unauthorized and void and the Circuit Court of Appeals affirmed.(1) The Trial Court set off against the respondent's recovery the $45,000 already paid and as to this the Circuit Court of Appeals reversed. Finally, the Circuit Court of Appeals remanded the case for a determination of the precise present avails of the specific legacy of the remainder interest in 225 shares of the 1919 Vick Chemical Company.

Only questions of law relating to the construction of a North Carolina will and the administration of a North Carolina estate are involved.

---

(1) The complaint alleged fraud and conspiracy, which charges were dismissed. The District Judge said (R. 141):

> "* * * I am fully convinced that Mrs. Richardson and her children had no intention of defrauding anyone, and especially the church and its benevolent causes to which they and their relatives had been, and still are, closely identified. They were advised by counsel of ability and character that the things done by them were legal, they had a right to rely upon that advice and they did rely upon it. The evidence shows that the defendants are people of the highest character and I do not believe for a moment that anyone of them would knowingly commit a fraud against the plaintiffs or either of them. They made no misrepresentation of any fact nor did they conceal or withhold any knowledge where it was their duty to speak. Their transactions were considered and deliberate, open and aboveboard. The parties with whom they dealt were intelligent and everyday business men of large affairs, persons not so easily deceived. The charges of fraud and every cause of action based thereon are dismissed."

The Circuit Court of Appeals agreed with the Court below that no fraud had been shown with respect to the transaction (R. 276).

B. Summary of the Facts.

On September 18, 1919, the will of Lunsford Richardson, Sr., was admitted to probate by the Superior Court, Guilford County, North Carolina, the place of the decedent's domicile. Mr. Richardson left a widow and five children surviving (Finding 5), and the widow and the two sons qualified as Executors on October 20, 1919 (Finding 6). Item Fifth of the testator's will reads (R. 240):

> "FIFTH. I give and bequeath to my beloved wife, Mary Lynn Richardson, eight one-hundredths interest in the Vick Chemical Company. At the death of my said wife it is my desire that of the said eight one-hundredths interest so devised to her, three one-hundredths thereof shall be and become absolutely the property of the Trustees of the First Presbyterian Church, and the profits or dividends arising therefrom shall be used by the said Trustees for the benefit of Home and Foreign Missions and the benevolent causes of the church, in such proportion as the Trustees deem best. The remaining five one-hundredths interest I desire to be distributed equally among my five children, herein named, each receiving one share thereof in fee simple."

Item Seventh of the will authorized the legatees to sell their legacies and set forth a formula whereby the sale price should be fixed. The Circuit Court of Appeals found that the remainder interest in the stock "was worth under the formula provided in the will only about $26,000" (R. 268).

In 1920 the First Presbyterian Church of Greensboro conducted a city-wide canvass to raise funds to enlarge its buildings. Not being entirely successful, the question arose as to the right of the respondent Trustees to sell the legacy in question. Whereupon the testator's widow conferred with an "eminent member of the Greensboro bar," Col. F. B. Hobgood, Jr., who advised that the bequest in question "was the property of the First Presbyterian Church of Greensboro and could be sold by the Trustees of said church"

(Finding 20). After various communications the Elders and Deacons of the First Presbyterian Church at a joint meeting duly called appointed an investigating committee to consider the matter (Finding 22). A. M. Scales, Esq. was a member of this committee and acted as attorney therefor. The committee met, investigated (Finding 23), and thereafter recommended the sale of said remainder interest for the negotiated price of $45,000 (Finding 24), which represented the value of the remainder interest plus the widow's life estate as computed by the formula set forth in the will. This recommendation was duly adopted and the sale approved by the Elders and Deacons of the church in joint session December 17, 1922 (Findings 24-25). On February 26, 1923, the widow paid the $45,000 to the three Church Trustees (Finding 25), two of whom are respondents herein including "R. R. King, an outstanding lawyer." On March 8, 1923, the bill of sale conveying all their interest and all the interest of the Church was executed by the Church Trustees and on March 16, 1923, this was recorded (Finding 25). Subsequently the congregation of the Church was apprised of the sale and authorized the use of the proceeds to purchase real estate (Finding 33). The widow conveyed this remainder interest and her life estate in such stock to her five children for the price she paid the Church (Finding 27).

On March 1, 1923, the executors filed their final account, which was audited and approved (Finding 18).

The courts below held the sale null and void and ordered the petitioners some 19 years later to deliver to the respondent Trustees the specific legacy and increment.[2]

---

(2) The judgment is against the Vick Chemical Company and the two executors. It is not against the executors as individuals (R. 284). The executors parted with the bequest in 1923. Neither the First Presbyterian Church which at the time of the sale claimed title to the legacy nor the purchasers thereof nor those now in possession of the property are parties to this suit.

Necessarily, therefore, the questions presented are whether the federal courts in construing the will and in reviewing the administration of the aforesaid North Carolina estate have decided important questions of North Carolina law in a way that conflicts with the applicable North Carolina statutes and decisions.

Questions Presented

1. Whether the courts below followed the North Carolina statutes in force since 1796 and applicable decisions in holding that the bequest in question constituted a gift to the Trustees of the First Presbyterian Church of Greensboro upon an express trust *"to be held by them for special purposes beyond the control of the congregation"* (R. 271) rather than an absolute gift to that Church.

2. Whether the courts below followed the North Carolina statutes and applicable decisions in holding that the Church Trustees exercised the power of sale in derogation of the trust and did not make a valid sale where the *"transactions were considered and deliberate, open and aboveboard"* (R. 141).

3. Whether the courts below followed the North Carolina statutes and applicable decisions in holding that this action is not barred by limitations, laches or estoppel.

4. Whether the courts below followed the North Carolina statutes and applicable decisions in holding the corporate defendant liable for the transfer of the stock in question.

Reasons for Granting the Writ

The Circuit Court of Appeals has decided an important question of local law relating to trusts and bequests to an ecclesiastical body in a way probably in conflict with applicable local decisions. This is a case where the jurisdiction of the District Court is based solely on diversity of citizenship. It involves questions arising out of the administration of the estate of a North Carolina decedent and the right to succeed to the ownership of personal property, matters which this Court has said are "peculiarly matters of state law." *Harris* v. *Zion's Bank,* 317 U. S. 447, 450. The accident of diversity should not lead to a different result than would have been reached in the courts of North Carolina.

In the case at bar the Circuit Court of Appeals did not follow the applicable statutes or decisions of the Supreme Court of North Carolina. Circuit Judge SOPER in his dissenting opinion, which relies wholly on the North Carolina statutes and decisions, indicated clearly that his fellow judges had not followed the applicable local law, saying:

> "The decisions of the highest court of North Carolina should govern us in this case" (R. 291).

This squarely puts in issue the point that the Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions. It is of public importance that this Court resolve this doubt, otherwise there will be continuous conflict between the federal rule as represented by the majority opinion and the state rule of North Carolina with respect to the questions raised in this petition—a result which this Court has sought to prevent. *Erie Railroad* v. *Tompkins,* 304 U. S. 64; *Fidelity Trust Co.* v. *Field,* 311 U. S. 169, 180-181. This case, like *Fidelity Trust Co.* v. *Field,* involves:

"practical aspects of great importance in the proper administration of justice in the federal courts."

The dissenting opinion is found in the Record, pages 287 to 293.

The following points demonstrate in particular that the majority opinion is in conflict with the applicable local law of North Carolina.

1

The gift was outright to the First Presbyterian Church of Greensboro.

In his will the testator expressed his desire that on the death of his widow three one-hundredths interest in the stock of the Vick Chemical Company—

> "shall be and become absolutely the property of the Trustees of the First Presbyterian Church, and the profits or dividends arising therefrom shall be used by the said Trustees for the benefit of Home and Foreign Missions and the benevolent causes of the church, in such proportion as the Trustees deem best."

Insofar as this language created an enforceable interest in anyone, it was in favor of the ecclesiastical body existing under North Carolina law and known as the "Trustees of the First Presbyterian Church." This is an entity existing not under the general corporation laws of North Carolina, but under statutes which were first enacted in 1796. The text of these statutes is now found in C. S. 3568-71 (Appendix). Under these statutes the ecclesiastical body may appoint trustees to receive donations in their own names on behalf of the church and such trustees, acting for the church in their own names, may sell its real and personal property when directed by such church, or its committee or body having charge of its finances.

The North Carolina courts have long recognized that the effect of these statutes is to make a religious congregation a corporation, sometimes referred to as a quasi corporation.[3] This has been determined in *Trustees* v. *Dickenson,* 12 N. C. 189 (discussion on p. 200), decided in 1827; *Lord* v. *Hardie,* 82 N. C. 241 (1880); *St. James* v. *Bagley,* 138 N. C. 384 (1905); *Conference* v. *Allen,* 156 N. C. 524 (1911), and *Way* v. *Ramsey,* 192 N. C. 549 (1926).

There are various ways of referring to the corporation so created, according to the denomination and practice of the religious body. Thus, in *St. James* v. *Bagley,* 138 N. C. 384 (1905), where an Episcopal church was involved, the corporation is referred to as *The Wardens and Vestry of Saint James' Parish.* In *Tilley* v. *Ellis,* 119 N. C. 233, 243 (1896), the name of the Northern Methodist Church was held to be *"Trustees of the Methodist Episcopal Church."* In the case of a Presbyterian church the proper mode of reference to the corporation is to the *"Trustees of the ..... Presbyterian Church."* A gift in those terms is not a gift to any individuals as trustees, but is a gift to a corporation by that name. It is the same, for example, as a gift to the President and Fellows of

---

(3) The use of the word quasi in speaking of these religious corporations does not mean that they are *de facto* corporations. It is used instead to indicate that they are not ordinary corporations existing under the general corporation act, but that they are special corporations deriving their existence from the early legislation with respect to religious bodies. This matter is discussed in Zollman, American Church Law (1933), §§ 122, 123. In the latter section, the author says:

> "Many such donations [to churches] have been declared void by the court. This was felt as an evil, and the Legislatures were appealed to for a remedy. The remedy applied was to declare all such bodies corporations for the purpose of taking property. Such statutes were passed even before the Revolution. Thus the Pennsylvania statute creating such quasi corporations dates back to 1731, while Maryland followed in 1779, Massachusetts in 1811, and Vermont in 1814. Similar statutes had been passed in New Hampshire, North Carolina, and Tennessee, * * *"

Harvard College. That is the accurate legal name of the corporation which conducts Harvard University.

In the present case, the gift to the *"Trustees of the First Presbyterian Church"* was a gift to an "ecclesiastical body" existing under North Carolina law. The gift was plainly to the local Greensboro church because its name was accurately used in the will. As Judge SOPER says in his dissent (R. 288):

> "The bequest to the trustees of the church in this case was therefore in effect a bequest to the church, as the testator, who was very familiar with the organization of the Presbyterian Church, well knew."

The will in this case was drawn for an eminent layman by a lawyer who was an active member and officer of such church (R. 132) and there is every reason to think and the presumption is that when they used accurate legal language they meant the words to be so read.

The references in the will to the Trustees do not make a gift to, or confer powers on, any persons individually as trustees, but are the means of making a gift to such "ecclesiastical body" existing and so designated under North Carolina law. That this is the correct construction of the language used is emphasized by the testator's use of the word *"absolutely,"* which word is used in the statute (C. S. 3570), to describe the church's estate in donations. Judge SOPER said (R. 288):

> "One does not give property to another absolutely when one intends to give it to him as trustee."

The testator and his lawyer knew what language to use to create a trust (Items Eight and Nine of the will).[4]

---

(4) This is pointed out in Judge SOPER's dissenting opinion, where he says (R. 289):

> "No one interested in the establishment of a trust in this case satisfactorily explains why the testator did not use language of the same unmistakable clarity in the fifth paragraph of the same document if there also he intended to leave property in trust and not to make an absolute gift."

Church law is peculiarly a matter of local competence. The failure of the Circuit Court of Appeals to follow the statutes and law of North Carolina in this respect is fundamental to this case. For if there is a trust of any sort it must, under North Carolina law, be the church corporation which is the trustee, for the gift is to it and to no one else. *But that corporation is not a party to this suit.* The individual plaintiffs were given nothing by the will. They do not sue as trustees of the church, but as trustees of a separate charitable trust. The respondent corporate agencies have no standing except (at most) through their trustee, the church corporation. The Court will not fail to see the significance of the fact that the church corporation itself, controlled as it is by the Session and members, has not chosen to become a party to this suit.

Even if the church corporation were a party here, however, there would still be no trust under North Carolina law. The decision of the Circuit Court of Appeals that there is a trust is in conflict with the decisions of the North Carolina Supreme Court, notably with *St. James* v. *Bagley,* 138 N. C. 384 (1905), and *Williams* v. *Thompson,* 216 N. C. 292 (1939). The conflict with the latter case is clear and striking. The testator there devised land "to be used by the stewards or legal representative of the said Church in the Town of Plymouth *as a parsonage for the minister and for no other purpose,* in order to secure the possession of my burying ground to the aforesaid Church and to its keeping and care." The trustees of the Church conveyed their interest to a third person. In holding that no trust was created with respect to the property, the Court said (p. 293):

> "The language contained in the will, indicating that the property was to be used as a parsonage for the minister of the church in order to secure the possession of the burying ground to the church and to its keeping and care, cannot be held to have the effect of impressing a trust upon the legal title (*St. James*

> v. *Bagley,* 138 N. C. 384, 50 S. E. 841) * * *. The language used in the will expresses the wish of the testatrix as to future use of the land, but it cannot be given the legal effect of creating a trust such as to require the aid of a court of equity to enforce its administration."(5)

The court below endeavored in its opinion to distinguish the decision in *Williams* v. *Thompson.* It said (R. 272):

> "Since the provision of a parsonage for the minister is one of the ordinary uses made by a church of its property the direction amounted to no more than a direction as to how the grantee of property should use it."

The weakness of this distinction serves, we submit, to emphasize the conflict between the decision below and that of the Supreme Court of North Carolina in *Williams* v. *Thompson.* In the present case, the gift was "*for the benefit of Home and Foreign Missions and the benevolent causes of the church.*" It is difficult to see how it can be said that these are not among the ordinary purposes and objectives of the church. This point is well made by Judge SOPER in his dissenting opinion, where he says (R. 290):

> "There is no legal distinction between a gift of property to be used for the benevolent causes of a church and of property to be used for a parsonage, for both are within the corporate purposes. It was doubtless in view of this fact and of the established

---

(5) This is typical of other North Carolina decisions. Thus, in *Blue* v. *Wilmington,* 186 N. C. 321 (1923), property was conveyed to "the Board of Aldermen of the City of Wilmington, for the purpose of a public park for the citizens' use and pleasure in fee simple." In *Hall* v. *Quinn,* 190 N. C. 326 (1925), land was conveyed to the Trustees of the James Sprunt Institute "to be used for the purposes of education, and for no other purposes." In both cases the Court held that no trust was created and that the conveyances were in fee simple.

> state law that competent counsel, learned in the law of North Carolina, advised the church in 1923 that the sale of the stock by the church was within its rights. The decisions of the highest court of North Carolina should govern us in this case."

It is hard to believe that the North Carolina Supreme Court would hold that a gift for the use of maintaining a parsonage was an outright gift for the purposes of the church, and yet would hold that the benevolent causes of the church[6] are not as much a part of the church's activities as the maintenance of a parsonage.

2

The sale in question was valid and enforceable.

The majority opinion below held that the petitioners are liable for participation in the sale since the proceeds were as a matter of law to be diverted from their proper use, stating (p. 16) that the defendant company was "*likewise chargeable with knowledge*" and (on p. 25) that the sale amounted to nothing "*since all parties were charged with notice that the remainder was subject to the trust.*"

The courts below also found that both sides were represented by outstanding attorneys of North Carolina who agreed that the sale was proper; that the respondent Trustees executed a bill of sale which was recorded after the advisability of selling was investigated at length and considered by two meetings of the Church Session and duly

---

(6) The Circuit Court of Appeals (R. 273) affirmed the Trial Court in holding that:

> "The gift as shown above was to the Trustees of the First Presbyterian Church in trust for the Home and Foreign Missions and benevolent causes of that church."

approved. The majority opinion states (p. 16) "that they (petitioners) had no fraudulent intent and honestly believed that they were acting lawfully does not affect the matter." In other words, the Court below held that even though the "transactions were considered and deliberate, open and aboveboard" (R. 141) and all parties used due diligence and reasonably believed that the transfer was proper, nevertheless the defendants are liable.

This is directly contrary to the North Carolina law. In *Carswell* v. *Creswell*, 217 N. C. 40 (1940), the Court upheld an alleged irregular sale by trustees where it was entered into after diligent investigation, publicly and for a fair price, upon several grounds, one being (p. 47):

> "We think the deed of the trustees bound all who had an interest in the land if not the community meeting, and other matters set forth in the record were in the nature of an estoppel."

Section 297, *Comment l*, of the *Restatement of the Law of Trusts* provides in part:

> "If the transferee has notice of the existence of a trust and of the terms of the trust, and after using due diligence to ascertain whether the transfer is in breach of trust reasonably believes that the facts are such that the transfer is not in breach of trust, he takes free of the trust if the other requirements of *bona fide* purchase are complied with."

This proposition of law is emphasized in North Carolina by its statute (C. S. 1864 (e)(2), (f) and (g)), providing that only "bad faith" will render a participant liable for the diversion of the proceeds of a sale by a fiduciary.

The majority opinion below (pp. 15-18) relies upon cases where the transfer was not made after diligent investigation, publicly and in good faith.

3

This action was barred under North Carolina law.

A. Constructive Trusts Are Immune From Attack After Ten Years Under North Carolina Law.

The basis of liability, the majority opinion holds, is that a constructive trust arose upon the sale in 1923 (R. 275, 276, 285). The Court below said (R. 280):

> "What occurred, however, was • • • a sale of the remainder by the trustees to the holder of the life interest under such circumstances as to constitute a breach of the trust and impress a constructive trust upon the remainder in the hands of the holder of the life interest and her transferees."

In North Carolina the law is well settled that a constructive trust cannot be attacked after 10 years. In *Teachey* v. *Gurley*, 214 N. C. 288 (1938), it is said (pp. 293-4):

> "Actions to enforce constructive or resulting trusts are based upon the original wrongful or tortious act of the person holding title by reason of which equity impresses a trust upon his title. No contract relation exists. A cause of action arises when the wrong is committed. Therefore the statute of limitations immediately begins to run and the 10-year statute applies unless sooner barred under the doctrine of laches. C. S. 445."

It makes no difference whether the trustee sues or a beneficiary sues. *Carswell* v. *Creswell*, 217 N. C. 40, at 46 (1940); *Clayton* v. *Cagle*, 97 N. C. 300, at 303 (1887); *Hayden* v. *Hayden*, 178 N. C. 259 at 264 (1919).

The cases relied upon in the courts below by the respondents are not cases where the remainderman sold

his remainder interest. *Pritchard* v. *Williams,* 175 N. C. 319 (1918), was a case where the plaintiff's remainderman had done nothing and the Court found (bottom p. 324) the defendants were "not purchasers for value and all took with notice." The other cases, such as *Wooten* v. *Railroad,* 128 N. C. 119 (1901), and *Baker* v. *R. R.,* 173 N. C. 365 (1917), likewise did not involve constructive trusts. There also the remainderman had taken no action. Here as Judge SOPER well says in his dissenting opinion (p. 34):

> "If the transfer of the stock and the disposition of the proceeds of sale constituted a breach of trust and gave rise to a constructive trust impressed upon the stock in the hands of the purchasers, it took place in 1923 when they acquired it and the purchase price was used to aid in the building of a new church; and limitations began to run in that year."

Certainly since the respondent Trustees of the Church sold their remainder interest in 1923 in good faith and for its full value they could not now successfully attack it in the North Carolina courts.

B. A Special Statute in North Carolina Bars This Action Against the Petitioning Executors.

C. S. 150 of the North Carolina Code provides that executors at the end of two years shall distribute the estate. C. S. 109 provides that executors may be required to file their accounts at any time after two years. C. S. 147 provides that legacies may be recovered by petition in the Superior Court at any time after two years from the date of qualification of the executors.

These executors qualified October 20, 1919. They were therefore required to distribute by October 20, 1921.

In *Edwards* v. *Lemmond,* 136 N. C. 329 (1904), the Court held that the North Carolina statute of limitations began

to run in favor of executors at the end of two years from the date of qualification. C. S. 445, the Court held, fixed a limit of ten years within which suit might be brought against an executor. *Pierce* v. *Faison,* 183 N. C. 177 (1922), is to the same effect. This is the unquestioned law in North Carolina. While the prevailing opinion below ignored this well settled North Carolina law, Judge SOPER in his dissenting opinion says (pp. 34, 35):

> "So far as the defendant executors are concerned the defense of limitations rests upon the North Carolina statutes as interpreted in *Edwards* v. *Lemmond,* 136 N. C. 329 • • •. The court said that at the end of two years the law makes the demand and puts an end to the express trust, although no express demand is made by any interested party upon the executor in default, and that an action will then lie at the instance of anyone entitled to a settlement of the estate."

The decision on this point, therefore, would seem to be clearly in conflict with the law established by the Supreme Court of North Carolina.

C. Limitations, Laches and Estoppel.

The probate of the testator's will in 1919 "became general knowledge of the church" (R. 158). Aubrey L. Brooks, one of the respondent Trustees, drew the testator's will and was a member of such Church (opinion of Trial Judge, p. 2). Mr. Brooks was also an attesting witness to the will. He was also a member of the Building Committee of the aforesaid Church and knew of the sale in question. On May 9, 1932, Mr. Brooks was elected a Trustee of said Church. Respondents King and Vaughn were both serving as Trustees of the Church at the time of the sale and signed the aforesaid bill of sale.

No excuse is given for the long delay in questioning the transaction. The position of the purchasers has changed materially. In *Rand* v. *Gillette,* 199 N. C. 462, 463, it is said that an estoppel is based upon an everyday application of the golden rule:

> "It requires that one should do unto others as in equity and good conscience he would have them do unto him if their positions were reversed."

Stale claims are not looked upon with favor by the North Carolina courts. *Teachey* v. *Gurley,* 214 N. C. 288 at page 295.

Furthermore, even if the parties to the sale in question could be considered to have been parties to a diversion of the trust funds (which they were not) it would not help these respondents. Respondent Brooks was an independent Trustee. He was elected May 9, 1932. He was then in a position to sue. In *Curtis* v. *Connly,* 257 U. S. 260, Mr. Justice HOLMES, writing for the Court, says at page 264:

> "Even if otherwise the statute of limitations would not have run, which we do not imply, knowledge of the facts by the new directors was knowledge by the bank, and none the less that according to the bill they in their turn were unfaithful."

In *Cameron* v. *Hicks,* 141 N. C. 21 (1906), a trustee died but the court held that his heirs succeeded to the trust as independent trustees so that the statute barred a subsequent suit by a beneficiary against a purchaser who held adversely by virtue of an irregular transfer from the original trustee. Section 327 of the *Restatement of the Law of Trusts* is to the same effect.

C. S. 441 of the North Carolina Code bars an action by an independent trustee in a case such as this in three years. Since it is clear that respondent Brooks was elected

a Trustee in 1932 this action would in any case under North Carolina law be barred in 1935. Furthermore, the North Carolina courts hold that where a trustee is barred by the statute of limitations, the cestuis are also barred, since the cestuis are bound by the acts or failure to act on the part of the trustee. *Carswell* v. *Creswell*, 217 N. C. 40, 46; *Clayton* v. *Cagle*, 97 N. C. 300, 303 (1887). In *Muse* v. *Hathaway*, 193 N. C. 227 (1927), the court says (p. 230), "The life interest did not prevent the statute from running."

Certainly the North Carolina courts would not have permitted this action to be maintained. In *West* v. *American Telephone & Telegraph Co.*, 311 U. S. 223 (1940), where this Court was considering the statute of limitations of Ohio as affecting parties similarly situated, this Court pointed out that there should not be two divergent or conflicting systems of law, one to be applied in the state courts and the other to be availed of in the federal court only in case of diversity of citizenship.

4

The petitioner corporation is under no liability to the respondents.

Section 1864(g) of the North Carolina Code provides that a corporation is not liable in transferring securities held by fiduciaries unless it is done "in bad faith." Here the stock in question was transferred out of the names of fiduciaries (R. 39). The facts found completely eliminate bad faith (R. 37, 276). This necessarily bars liability.

The cases relied upon in the courts below, *Baker* v. *R. R.*, 173 N. C. 365 (1917), *Wooten* v. *The Railroad*, 128 N. C. 119 (1901), and similar cases, were all decided before the aforesaid statute was passed. Such statute became effec-

tive February 27, 1923. The statute changed the rule. 1 N. C. Law Rev. 291. The transfer in question was made on February 28, 1923, one day after such statute became effective (Finding 27, R. 120).

Again, Defendants' Exhibit 5-F (II, Tr. 67-b) shows that the 1925 Vick Chemical Company of Delaware assumed liabilities of only $49,915.15 of its predecessor company and under the law of North Carolina it could not in the courts of such state be held liable to the respondents here. *McAllister* v. *Express Company*, 179 N. C. 556 (1920). Furthermore, any liability on the part of the successor company if there had been any would long since have been barred under the North Carolina law. *Standard Trust Co.* v. *Commercial National Bank*, 240 Fed. 303 (C. C. A. 4).

CONCLUSION

Where, as here, one of the judges of the Circuit Court of Appeals in his dissent has taken pains to point out that the majority opinion has not followed the applicable State law, this Court should grant certiorari to resolve the conflict between the Federal and State courts.

Respectfully submitted,

LEE MCCANLISS,
Attorney for Petitioner.

B. S. WOMBLE, Winston-Salem, N. C.,
C. CLIFFORD FRAZIER, Greensboro, N. C.,
RUSSELL M. ROBINSON, Greensboro, N. C.,
MARION W. SMITH, New York, N. Y.,
Of Counsel.

APPENDIX

STATUTES CITED

PAGE

(Note. C.S. refers to the Consolidated Statutes of North Carolina. Only portions of the statutes pertinent and applicable to the instant case are quoted.)

C.S. 109. *Final accounts.*—An executor or administrator may be required to file his final account for settlement in the office of the clerk of the Superior Court by a citation directed to him, at any time after two years from his qualification, at the instance of any person interested in the estate, but such account may be filed voluntarily at any time; and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk. (Rev., s. 103; Code, s. 1402; C. C. P., s. 481.) 17

C.S. 147. *Legacy or distributive share recoverable after two years.*—Legacies and distributive shares may be recovered from an executor, administrator or collector by petition preferred in the Superior Court, at any time after the lapse of two years from his qualification, unless the executor, administrator or collector shall sooner file his final account for settlement. The suit shall be commenced and the proceeding therein conducted as prescribed in other cases of special proceedings. (Rev., s. 144; Code, s. 1510; 1868-9, c. 113, s. 83.) 17

C.S. 150. *Representative must settle after two years.*—No executor, administrator, or collector, after two years from his qualification, shall hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements and such

PAGE

debts as he shall legally pay; but all such estate so remaining shall, immediately after the expiration of two years, be divided and be delivered and paid to the person to whom the same may be due by law or the will of the deceased; and the clerk of the Superior Court in each county shall require settlement of the balance in hand due distributees as shown by the final account of any administrator, executor, or guardian, and shall audit same: Provided, that the several clerks of the Superior Courts of this State may, in their discretion, for good cause shown, extend the time for the final settlement of any administrator or executor; provided, that nothing herein contained shall relieve any such administrator or executor of the duty of administering and distributing such funds and property in his hands as may be available for such purposes; provided, further, that any party having an interest in any such estate may, within ten days from the entry of an order extending the time for final settlement, appeal from such order to the resident or presiding judge of the district, which appeal shall be heard as is now or may hereafter be prescribed by law for the hearing of other appeals from the clerk. (Rev., s. 147; Code, s. 1488; 1868-9, c. 113, s. 59; 1919, c. 69; 1933, c. 188; 1935, c. 377.) 17

C.S. 441. *Three years.—Within three years an action*—1. Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections.

2. Upon a liability created by statute, other than a penalty or forfeiture, unless some other time is mentioned in the statute creating it.

3. For trespass upon real property. When the trespass is a continuing one, the action shall be commenced

within three years from the original trespass, and not thereafter.

4. For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

5. For criminal conversation, or for any other injury to the person or rights of another, not arising in contract and not hereinafter enumerated.

6. Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

7. Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

8. For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

9. For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

10. For the recovery of real property sold for the nonpayment of taxes, within three years after the execution of the sheriff's deed. (Rev., s. 395, Code, s. 155; C. C. P., s. 34; 1895, c. 165; 1889, cc. 269, 218; 1899, c. 15, s. 71; 1901, c. 558, s. 23; 1913, c. 147, s. 4.)..... 19

C.S. 445. *All other actions, ten years.*—An action for relief not herein provided for must be commenced

PAGE

within ten years after the cause of action has accrued. (Rev., s. 399; Code, s. 158; C. C. P., s. 37.)..... 18

C.S. 1864(e). *Definition of terms.*—

2. A thing is done "in good faith" within the meaning of this law when it is in fact done honestly, whether it be done negligently or not. (1923, c. 85, s. 1.).....15, 20

C. S. 1864(f). *Application of payments made to fiduciaries.*—A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary (1923, c. 85, s. 2).....15, 20

C. S. 1864(g). *Registration of transfer of securities held by fiduciaries.*—If a fiduciary in whose name are registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only when registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith (1923, c. 85, s. 3).....15, 20

C. S. 3568. *Trustees may be appointed and removed.*—The conference, synod, convention or other

PAGE

ecclesiastical body representing any church or religious denomination within the state, as also the religious societies and congregations within the state, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise (Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 2; 1844, c. 47; 1848, c. 76) 9

C. S. 3569. *Trustees may hold property.*—The trustees and their successors have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation; and they may sue or be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matters relating thereto. They shall be accountable to the churches, denominations, societies and congregations for the use and management of such property, and shall surrender it to any person authorized to demand it (Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 3; 1844, c. 47; 1848, c. 76)..... 9

C. S. 3570. *Title to lands vested in trustees or in societies.*—All glebes, lands and tenements, heretofore purchased, given, or devised for the support of any particular ministry, or mode of worship, and all churches and other houses built for the purpose of public worship, and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious

PAGE

denomination, religious society or congregation within the state for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society or congregation for which the glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which such churches, chapels or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested as between the parties thereto, in the trustees respectively of such churches, denominations, societies and congregations, for their several use, according to the intent expressed in the conveyance, gift, grant or will; and in case there shall be no trustees, then in such churches, denominations, societies and congregations, respectively, according to such intent (Rev., s. 2672; Code, s. 3665; R. C., c. 97, s. 1; 1776, c. 107; 1796, c. 457, s. 4) 9, 11

C. S. 3571. *Trustees may convey property.*—The trustees of any religious body may mortgage or sell and convey in fee simple any land owned by such body, when directed so to do by such church, congregation, society or denomination, or its committee, board or body having charge of its finances, and all such conveyances so made or heretofore made, or hereafter to be made, shall be effective to pass the land in fee simple to the purchaser or to the mortgagee for the purposes in such conveyances or mortgage expressed; and they may sell or mortgage its personal property (Rev., s. 2673; 1855, c. 384; 1889, c. 484) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 364

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware, *Petitioners*,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTEE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr., *Respondents*.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

L. P. MCLENDON,
Attorney for Respondents.

A. L. BROOKS, Greensboro, N. C.
THORNTON H. BROOKS, Greensboro, N. C.
CHARLES G. ROSE, Fayetteville, N. C.
W. H. HOLDERNESS, Greensboro, N. C.
Of Counsel.

INDEX

Table of Cases

Table of Textbooks Cited

Table of Statutes Cited

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 364

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware,

Petitioners,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTEE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The respondents respectfully submit the following brief in opposition to the petition for certiorari, filed on September

17, 1943, by the defendants (petitioners) to review a judgment of the United States Circuit Court of Appeals, Fourth Circuit.

Opinions Below

The opinion of Judge Johnson J. Hayes in the United States District Court for the Middle District of North Carolina (R. 6) is reported in 46 Fed. Supp. 510. The opinions of the Circuit Court of Appeals (R. 263) are reported in 136 Fed. (2d) 849.

Summary Statement of the Questions of Law Involved

We agree with the petitioners that the petition for certiorari raises "only questions of law relating to the construction of a North Carolina will and the administration of a North Carolina estate." (Petition p. 4.).

Summary of the Facts

The will in question was executed in 1917. For some time prior thereto Lunsford Richardson, Sr., the testator, had been engaged in the proprietary drug business and the preparation and marketing of Vick's Vapo-Rub. By December, 1917, his business was successful and he had associated with him as partners his two sons, giving to the defendant, H. S. Richardson, a thirty-five per cent interest, and the defendant, Lunsford Richardson, Jr., a fourteen per cent interest, retaining for himself a fifty-one per cent interest (Finding 1, R. 17).

The testator was a devout member of the First Presbyterian Church of Greensboro, North Carolina, and contributed liberally of his means to the benevolent causes of the Church. He was familiar with the Church organization, Church Order and Constitution of the Presbyterian Church in the United States, and from time to time attended meetings of the Presbytery, Synod, and General Assembly as a delegate or commissioner from his local church (Finding 2, R. 17). The benevolent causes of the Church were administered by corporate executive committees, the members of which were appointed by

the General Assembly and are identified and described in the Trial Court's Finding No. 3 (R. 17). The trustees designated in Item Fifth of the will and some of these benevolent causes are the plaintiffs herein. With these causes and the practice of the Church in supporting them the testator was thoroughly familiar (R. 12).

The testator died August 21, 1919. By his will he disposed of his 51/100 interest in the Vick Chemical Company by giving 3/100 interest to the defendant, J. H. S. Richardson, 10/100 to the defendant, L. Richardson, Jr., and 10/100 interest to each of his three daughters for life with remainder to their children, and the remaining 8/100 interest he disposed of by Item Fifth of his will, reading as follows:

> "Fifth: I give and bequeath to my beloved wife, Mary Lynn Richardson, eight one-hundredths interest in the Vick Chemical Company. At the death of my said wife it is my desire that of the said eight one-hundredths interest so devised to her, three one-hundredths thereof shall be and become absolutely the property of the Trustees of the First Presbyterian Church, and the profits or dividends arising therefrom shall be used by the said Trustees for the benefit of Home and Foreign Missions and the benevolent causes of the church, in such proportion as the Trustees deem best. The remaining five one-hundredths interest I desire to be distributed equally among my five children, herein named, each receiving one share thereof in fee simple." (R. 265.)

The individual defendants, J. H. S. Richardson and L. Richardson, Jr., and their mother qualified as Executors. No order has been entered discharging the Executors and no successor-executor was appointed upon the death of Mrs. Richardson on July 16, 1940 (Finding 6, R. 19).

The legacy in question consisted of 450 shares, 225 shares of which were sold to the Vick Chemical Company in May, 1921. (The plaintiffs were denied recovery in the courts below of the 225 shares so sold).

In 1922, the following letter was written over the signature of Mrs. Richardson. (The words "of the trustees" in the original having a line drawn through them):

"PLAINTIFFS EXHIBIT NO. 9 LETTER MRS. RICHARDSON TO SESSION—NOVEMBER 10, 1922:

118 Smith St.,
Nov. 10-22

Mr. H. Barton, Clerk of Session
First Pres. Church
Dear Mr. Barton:

You will recall that Mr. Richardson, in his will, left to the 1st Pres. Church at my death, three one-hundredths of the stock of the Vick Chem. Co.—that is, 225 shares—'to become absolutely the property ~~of the Trustees~~ of the 1st Pres. Church, and the profits, or dividends arising therefrom, shall be used by the said Trustees for the benefit of Home and Foreign Missions and the benevolent causes of the church, in such proportion as the Trustees deem best.'

I have been thinking a great deal lately, of this bequest, and wish to present to the Session my ideas thereon.

This stock will not come into the possession of the church until my death, but it seems to me that the church needs money now, more than it will later. In addition, I am very much interested in seeing that some part of the church which Mr. Richardson loved so well, be identified with his name and that this be done now, before those who knew, and loved, him have passed away.

In talking this over with my son, H. S. Richardson, he said it could be done, by the Vick Chem. Co. buying the rights to these 225 shares, if a price, mutually agreeable, could be arrived at.

I am also very much interested in Davidson College, and the family is now making gifts to the College, which will also become a memorial to Mr. R. Therefore, if this plan is carried out, I would wish:

1st. That at least $5000.00 of whatever price is agreed upon be given by the 1st Pres. Church to Davidson College, to be added to the L. Richardson Memorial Fund there.

2nd. That some part of the new church, into which I suppose this money will go, will bear Mr. R.'s name and be a permanent memorial to him.

3rd. Mr. Richardson's wishes were, that the income or profits from this stock go for the benefit of Home and Foreign Missions and the Benevolent Causes of the Church. I feel, however, that he would thoroughly approve of this transaction provided these three causes should not suffer.

Can anything be worked out along this line?

The above is merely a suggestion which I am glad to submit for your consideration.

Very truly yours,
MARY LYNN RICHARDSON." (R. 57)

Thereafter, on December 17, 1922, a report of the special committee of the Elders and Deacons of the First Presbyterian Church recommended the acceptance of Mrs. Richardson's offer. Said report was adopted (Findings 24, 25, R. 27, 28).

Without any prior consultation whatsoever between the Trustees of the Church and the Richardsons or the special committee, the Trustees, on or about March 8, 1923, executed a Bill of Sale to Mrs. Richardson in consideration of the sum of $45,000, which had been paid by her on February 28, 1923 (Finding 26, R. 29 and 58).

The purchase price was not used for the purposes of the trust but was diverted to the building of a new church and the payment of a subscription by the Richardson family to Davidson College (R. 286).

"The apparent purchaser of the 3/100 interest from the First Presbyterian Church or its trustees was Mrs. Mary Lynn Richardson. The real purchaser, however, was H. S. Richardson (91 shares), Lunsford Richardson, Jr. (58 shares) and their three sisters (25 shares each). A plan had been formulated by these real purchasers by which they had already agreed before the transaction was entered into to take over from the said Mary Lynn Richardson, either directly or through the Vick Chemical Company, the said stock interest that she was acquiring from the church or its trustees." (Finding 27, R.

29). "Not until the true facts were established by the evidence in this trial was it known who the real purchasers of the remainder interest from the church or its trustees were . . ." (Finding 27, R. 30).

No stock certificate was ever issued by the Vick Chemical Company to Mrs. Mary Lynn Richardson in her own name representing the 3/100 interest bequeathed in Item Fifth of the testator's will nor did any certificate issued to Mrs. Richardson for any amount show her limited ownership as life tenant and indicate who the owner of the remainder interest was (Finding 13, R. 22).

The corporation "was a family or closed corporation" (Finding 14, R. 23). Not until March 12, 1921, were any certificates representing any of the testator's stock issued, and on that date a certificate for the testator's 51/100 interest was issued to "H. S. Richardson, L. Richardson and Mrs. Mary Lynn Richardson, Executors and Trustees," and the stock transfer books so remained until after the attempted purchase of the stock in controversy in 1923 (Finding 12, R. 22 and R. 39).

On February 28, 1923, the 225 shares were issued to the individual defendants and their three sisters, as above stated (R. 39). While acting as President and Vice-President of the corporation and as Executors and Trustees under the will, the individual defendants procured the transfer of the 225 shares to themselves and their sisters individually (at that time they were the only stockholders of the company) before the Trustees of the Church were ever consulted or the Bill of Sale presented to them for execution on March 8, 1923 (R. 39, Finding 26, R. 29).

The Trial Court in its opinion concludes "According to the evidence produced in this court the price was inadequate" (R. 15). For the fiscal year ending June 30, 1923, the net profits of the corporation were $2,568,855.53, and the total number of shares outstanding was 7500 (R. 41). The Circuit Court of Appeals did not find that the remainder interest in

the 225 shares in controversy was worth $26,000 as stated on page 5 of petitioners' brief (R. 268).

"From the date of their qualification as Executors on October 20, 1919, to the dissolution of Vick Chemical Company (N. C.) on November 7, 1923, the position of the Executors on the one hand and the owners, officers and managers of the family-owned corporation, Vick Chemical Company, on the other hand, was interlocked and mutual to such extent that the knowledge, information and interest of one was the knowledge, information and interest of the other, and vice versa. As to all of the dealings and transactions between the executorship and Vick Chemical Company, the one merely acted as the alter ego or agent of the other, and vice versa." (Finding 15, R. 23).

The court below found that the Vick Chemical Company, whose stock constituted the legacy in controversy, has undergone many changes since 1923, but essentially it has remained the same corporate enterprise with substantially the same officers (R. 14).

Both the Trial Court and the Circuit Court held that there was a breach of the trust. A copy of the will was in the records of the corporation (R. 275-6).

The life tenant, Mary Lynn Richardson, died July 16, 1940, and this action was instituted in the District Court on June 25, 1941 (Finding 32, R. 34).

It is conceded that the beneficiaries of the trust (Home and Foreign Missions and the benevolent causes of the church) had no notice of the attempted sale and have received nothing from the bequest.

The Petitioners Are Not Entitled to the Writ

The petition does not justify the issuance of the writ. It fails to show that an important question of local law has been decided by the Circuit Court of Appeals. The questions of law involved are not of general public interest and do not fall "within the category of questions of such gravity and general

importance as to require a review of the conclusion of the Circuit Court of Appeals." The decisions of both the Trial Court and the Circuit Court of Appeals are but applications of the principles of North Carolina law to the facts in this case. The decision of the Circuit Court of Appeals was not based upon any new or novel principles of law but followed the statutes of North Carolina and the decisions of the Supreme Court of that State. Under the applicable rules and decisions of the Supreme Court the writ should not be granted.

Magnum Import Co. v. Coty, 262 U. S. 159, 67 Law ed. 924.

Bailey v. Central Vermont Rwy., 87 Law ed. (Adv. Op.) 1030.

As to each point advanced by the petitioners by way of argument that the decision of the Circuit Court of Appeals is "probably in conflict with applicable local decisions," we invite the Court's consideration of the fact that the Trial Judge is a North Carolina lawyer of long experience at the bar and on the bench, and the Senior Circuit Judge, who wrote the opinion of the Circuit Court, is also a North Carolina lawyer of long experience and great learning.

1

Petitioners' Contention that the Gift Was Outright to the First Presbyterian Church of Greensboro.

The answer to this contention is that both the Trial Court and the Circuit Court of Appeals construed the will by the application of well-settled principles of North Carolina law set forth in the decisions of the Supreme Court of that State and contained in its statute law.

The following statute of North Carolina is pertinent:

"C. S. 4035 (a) (Chap. 264, Sec. 1, Public Laws 1925): *"Indefiniteness; title in trustee; vacancies.*—No gift, grant, bequest or devise, whether in trust or otherwise, to religious, educational, charitable or benevolent uses or

for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, shall be invalid by reason of any indefiniteness or uncertainty of the object or beneficiaries of such trust, or because said instrument confers upon the trustee or trustees discretionary powers in the selection and designation of the objects or beneficiaries of such trust or in carrying out the purpose thereof, or by reason of the same in contravening any statute or rule against perpetuities. If a trustee or trustees are named in the instrument creating such a gift, grant, bequest or devise, the legal title to the property given, granted, bequeathed or devised for such purpose shall vest in such trustee or trustees and its or their successor or successors duly appointed in accordance with the terms of such instrument. If no trustee or trustees be named in said instrument, or if a vacancy or vacancies shall occur in the trusteeship, and no method is provided in such instrument for filling such vacancy or vacancies, then the Superior Court of the proper county shall appoint a trustee or trustees, pursuant to section four thousand and twenty-three, of the Consolidated Statutes of North Carolina, to execute said trust in accordance with the true intent and meaning of the instrument creating the same. Such trustee or trustees when so appointed shall be vested with all the power and authority, discretionary or otherwise, conferred by such instrument."

The following decisions of the Supreme Court of North Carolina are controlling and were followed by the court below:

Williamson v. Cox, 218 N. C. 177, 10 S. E. (2d) 662.
Thornton v. Harris, 140 N. C. 498, 53 S. E. 341.
Witherington v. Herring, 140 N. C. 495, 53 S. E. 303.
Hass v. Hass, 195 N. C. 734, 143 S. E. 541.
Ladies Benevolent Society v. Orrell, 195 N. C. 405, 142 S. E. 493.
Thomas v. Clay, 187 N. C. 778, 122 S. E. 852.
McLeod v. Jones, 159 N. C. 74, 74 S. E. 733.
Keith v. Scales, 124 N. C. 497, 32 S. E. 809.

It will be noted from the opinions of the Trial Judge and the Circuit Court of Appeals that a number of other North

Carolina Supreme Court decisions relied upon by the petitioners (defendants below) were considered and distinguished upon their facts from the instant case.

The petitioners' argument that the statutes of North Carolina (C. S. 3568-71) operate to compel the trustees to take the bequest for the local church is fully answered by the decision of the Circuit Court of Appeals (R. 270-1) and the case of *Thornton v. Harris, supra.*

2

The Petitioners' Contention That the Sale Was Invalid and Unenforceable.

On this point the Circuit Court of Appeals applied the principles repeatedly enunciated by the Supreme Court of North Carolina, some of the decisions being as follows:

Ward v. Brandt, 62 N. C. 71.
Bailey v. Wilson, 21 N. C. 182.
Lockhart v. Phillips, 36 N. C. 342.
Lemly v. Atwood, 65 N. C. 46.
Pritchard v. Williams, 175 N. C. 319, 95 S. E. 570.
Spence v. Pottery Co., 185 N. C. 218, 117 S. E. 32.
Nissen v. Baker, 198 N. C. 433, 152 S. E. 34.

As pointed out in the opinion of the Circuit Court, the principles of North Carolina law governing this aspect of the case are in conformity with the principles quite generally recognized by other courts including the Supreme Court of the United States. It is quite manifest that the case of *Carswell v. Creswell,* 217 N. C. 40, is not applicable to the facts in the instant case, and likewise the statutes of North Carolina cited by the petitioners afford no defense to the defendants.

3

The Petitioners' Contention That the Action is Barred Under North Carolina Law.

The court below carefully considered the same contentions now made by the petitioners with respect to the applicability of

the North Carolina statutes of limitations and followed the well-settled law of North Carolina as stated by its Supreme Court in numerous decisions, some of which are:

Wooten v. Wilmington W. R. Co., 128 N. C. 119, 38 S. E. 298.
Joyner v. Futrelle, 136 N. C. 301, 48 S. E. 649.
Baker v. Railroad, 173 N. C. 365, 92 S. E. 170.
Pritchard v. Williams, 175 N. C. 319, 95 S. E. 570.
Baggett v. Lanier, 178 N. C. 129, 100 S. E. 254.

The cases and statutes cited by the petitioners were argued in the Circuit Court and that court held that they were not applicable to the facts in this case.

4

The Petitioners' Contention That the Corporation is Under No Liability to the Respondents.

On this point the petitioners misinterpret the North Carolina statute, C. S. 1864-g (In Appendix to Petitioners' Brief). It will be noted that the statute fixes liability "when registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, *or* with knowledge of such facts that the action in registering the transfer amounts to bad faith." The very authority which the petitioners cite, 1 North Carolina Law Review, 291, states the exact opposite of the petitioners' position in the following language:

> "This section (C. S. 1864-g) does not apply to cases where the stock is held in the name of the principal or in the name of a decedent and the executor or administrator wishes to transfer to himself or to a third person."

In this connection, the Third Circuit Court of Appeals, in the case of *Seymour v. National Biscuit Company*, 107 Fed. (2d) 58, cites with approval the North Carolina case, *Baker v. Atlantic Coast Line Railroad*, 173 N. C. 365, as the law of North Carolina.

The liability of the corporate defendant rests upon North Carolina Supreme Court decisions, some of these being:

Baker v. Railroad, 173 N. C. 165, 92 S. E. 170.
Wooten v. Railroad, 128 N. C. 119, 38 S. E. 298.
Cox v. Nat. Bank of Wilson, 119 N. C. 302, 26 S. E. 22.
Edwards v. McLawhorn, 218 N. C. 543, 11 S. E. (2d) 562.

The petitioners' argument that the corporate defendant, Vick Chemical Company of Delaware, is not responsible for the liabilities of its predecessors is fully answered by the Finding of Fact No. 29 made by the Trial Court, reading in part as follows:

> "Each and every successor corporation as outlined above likewise became chargeable with the liabilities of its predecessor corporation, and the defendant, Vick Chemical Company (Del. 1933) is chargeable in law for the liabilities, if any, of Vick Chemical Company (N. C. 1919)."

This finding and conclusion is sustained by many precedents:

McIver v. Hdwe. Co., 144 N. C. 478, 57 S. E. 169.
Gilmore v. Smathers, 167 N. C. 440, 83 S. E. 823.
Northern Pacific R. R. Co. v. Boyd, 228 U. S. 481, 57 Law ed. 931.

The most casual reading of the case of *McAlister v. Express Co.,* 179 N. C. 556, 103 S. E. 129, cited by the petitioners, shows that it is not authority for relieving the corporate defendant of liability under the facts of this case.

In conclusion, we think the following excerpt from the opinion of the Circuit Court of Appeals conclusively disposes of every point raised by the petitioners in their application for the writ of certiorari:

> "We may assume, as defendants argue, that the trustees were vested with a power of sale with respect to corpus of the trust estate; but this becomes entirely immaterial

under the admitted circumstances of the case. Granting that the trustees had a power of sale with respect to the trust property, it was a power which they could lawfully exercise only for the purposes of the trust, and when it was exercised in derogation thereof, to the knowledge of the purchaser, the latter took the property subject to the trust. There can be no question but that the sale was made in breach of the trust to obtain funds for the new church building; that it was made pursuant to a prior arrangement that the proceeds of the sale should be used for that purpose, and Mrs. Richardson and her children, to whom the stock was transferred, were parties to the arrangement. The Vick Chemical Company, in making the transfer on its books, was likewise chargeable with knowledge of the trust and that the transfer was in violation thereof; for testator's will had been made a part of its record and all of its officers and stockholders, who at that time consisted of the members of the Richardson family, knew that the transfer was being made in violation of the trust created by the will." (R. 275.)

Respectfully submitted,

L. P. McLENDON,
Attorney for Respondents.

A. L. BROOKS, Greensboro, N. C.
THORNTON H. BROOKS, Greensboro, N. C.
CHARLES G. ROSE, Fayetteville, N. C.
W. H. HOLDERNESS, Greensboro, N. C.
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 364

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware,

Petitioners,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTEE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr.,

Respondents.

REPLY BRIEF OF PETITIONERS

LEE MCCANLISS,
Attorney for Petitioners.

B. S. WOMBLE, Winston-Salem, N. C.,
C. CLIFFORD FRAZIER, Greensboro, N. C.,
RUSSELL M. ROBINSON, Greensboro, N. C.,
MARION W. SMITH, New York, N. Y.,
Of Counsel.

INDEX

TABLE OF CASES

STATUTE CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 364

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware,

Petitioners,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTEE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr.,

Respondents.

REPLY BRIEF OF PETITIONERS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The brief for respondents fails to mention or discuss four important North Carolina decisions strongly relied

upon by petitioners to show that the court below failed to follow the applicable local law; *St. James* v. *Bagley,* 138 N. C. 384; *Williams* v. *Thompson,* 216 N. C. 292 (the bequest was absolute and not in trust); *Teachey* v. *Gurley,* 214 N. C. 288; *Edwards* v. *Lemmond,* 136 N. C. 329 (the action was barred).

Three of these cases Judge SOPER stressed in his opinion.

I.

A reading of respondents' Summary of Facts (pp. 2-7) might give the Court the impression that upon the testator's death the interest of Mrs. Richardson and the family in the First Presbyterian Church of Greensboro, North Carolina, ceased.

The facts are quite to the contrary. The entire Richardson family were devoutly interested in the Church. This did not cease with the testator's death (R. 255). As Judge SOPER well says (R. 291):

> "The members of the Richardson family were devoted to the church, as Mrs. Richardson's father and one of her brothers had been its ministers. During the period subsequent to the transfer of 1923, the family's gifts to the local church totalled one million dollars."

Furthermore, the circumstances surrounding the transaction in question in 1923 not only show Mrs. Richardson's interest in the Church but show her wish to carry out the "desire" of her husband. On page 4 of their brief respondents set forth Mrs. Richardson's letter of November 10, 1922. Petitioners rely upon this letter when read in

connection with the fifth item of the will as showing the precise situation. In the first sentence of that item the testator bequeathed an 8/100 interest in the Vick Chemical Company to his widow outright. In the next two sentences the testator stated his "desire" that upon his wife's death said interest be divided between the Church and the children. Under North Carolina law, *Hardy* v. *Hardy, et al.*, 174 N. C. 505, and *Springs* v. *Springs,* 182 N. C. 484, Mrs. Richardson could have taken the position that she was the absolute owner of the 8/100 interest and that the precatory words used in the second sentence of the fifth item of the will did not in any way limit such absolute ownership.

Wishing to carry out her husband's "desire", whether legally bound to do so or not, Mrs. Richardson wrote the letter of November 10, 1922. In the Church's acceptance (R. 27-28) it agreed:

> "That in order to more fully carry out the wishes of Mr. Richardson that the proceeds of this fund should be used for the benevolent causes of the church, we pledge ourselves to the Trustees of the church that the church will always give in addition to our apportionment for the benevolent causes, at least $2400.00 a year to these causes • • •."

In consummating this transaction the parties did not rely solely upon their own judgment in interpreting the provisions of the will and their rights thereunder. The transaction came before three eminent attorneys of Greensboro, North Carolina. Colonel F. P. Hobgood, "an eminent member of the Greensboro bar" (R. 115) advised Mrs. Richardson that the things done by her were legal, and she had a right to rely upon that advice and did rely thereon. A. M. Scales acted as attorney for the First

Presbyterian Church (Tr. 112). One of the Trustees, R. R. King, "an outstanding lawyer" (R. 135), executed the bill of sale (R. 250-252).

These North Carolina lawyers of outstanding ability and character considered the transaction contemporaneously with the sale. Yet nearly twenty years later the federal judges (SOPER, *J.*, dissenting) held that these eminent counsel made a mistake of law. The fact that the trial judge and one of the judges of the Circuit Court are members of the North Carolina bar is of little importance in view of the fact that the law is well settled as is pointed out in the petition herein and further of the practical construction given by all parties and attorneys at the time of the transaction nearly twenty years ago. This is especially true when the lips of principal witnesses have been sealed by death and the memory of others dimmed by age. *Hammond* v. *Hopkins,* 143 U. S. 224; *Teachey* v. *Gurley,* 214 N. C. 288, 294 (1938).

II.

The questions of law are of general public interest, involving as they do the application of fundamental principles of the law of trusts, estates and unincorporated religious bodies, which are peculiarly matters of local competence. Where similar legal questions were involved, that is whether a trust was established under the laws of the State of New Jersey, and the Circuit Court of Appeals divided, this Court granted certiorari on the ground that it was of great public importance that the law be settled, and after hearing reversed the decision of the Circuit Court. *Fidelity Trust Co.* v. *Field,* 311 U. S. 169, 180-181.

III.

The statute and decisions cited by respondents (pp. 8-9) in answer to petitioners' contention that the gift was outright to the First Presbyterian Church of Greensboro are not applicable.

C. S. 4035(a) cited by respondents was passed in 1925, two years after the transaction in question was entered into. It does not apply to this transaction.

Thornton v. *Harris,* 140 N. C. 498, held only that the defendant had no legal claim to the property, saying, page 500: "But it may well be inquired into, upon proper proceedings and by the proper parties, whether the plaintiffs have any claims to hold the possession, upon their own showing, except against mere trespassers." It does not help respondents.

In *McLeod* v. *Jones,* 159 N. C. 74, the Court held there were no trusts declared or contemplated, but the bequest was an outright gift to a well-ascertained charity. The Court cited *St. James* v. *Bagley,* 138 N. C. 384, relied on by petitioners to show that the gift was outright to the First Presbyterian Church of Greensboro.

Thomas v. *Clay,* 187 N. C. 778, 783, decided in 1924, one year after the sale in question and one year before C. S. 4035 was enacted, is clearly inapplicable, as the point there involved was the validity of the bequest, which was held to be indefinite and uncertain and hence void.

Keith v. *Scales,* 124 N. C. 497, 517, and *Hass* v. *Hass,* 195 N. C. 734, hold only that a latent ambiguity as to the *cestui que* trust or trustee or devisee is explainable.

The other three cases cited generally hold that the intent of the testator or donor must be gathered from the entire instrument, and if clearly expressed therein, controls. Petitioners do not question this but say the entire Will (R. 239-245), shows that the testator intended to make a gift absolute to the Church rather than create a trust (R. 288-289).

It is significant that respondents do not discuss or even mention the two North Carolina cases strongly relied upon by petitioners and which Judge SOPER held established that no trust was created and governed this case, namely, *St. James* v. *Bagley*, 138 N. C. 384, and *Williams* v. *Thompson*, 216 N. C. 292.

IV.

Respondents attempt to answer petitioners' point II that the sale was valid and enforcible by citing seven North Carolina decisions. The facts in these decisions distinguish them from the case at bar. *Ward* v. *Brandt*, 62 N. C. 71, principally relied upon by the Circuit Court of Appeals, involved confiscation by the Confederacy of enemy property, and its application to the case at bar seems remote.

Respondents fail to show that the action is not barred under the applicable North Carolina statutes and decisions. As pointed out in the petition (p. 16), the Circuit Court of Appeals expressly held that a constructive trust was impressed upon the remainder in the hands of the holder of the life estate and her transferees. Having so found, it was bound to follow the North Carolina decision of *Teachey* v. *Gurley*, 214 N. C. 288, and hold that the action was barred ten years after the wrong was committed. Such bar applied not only to the trustees but to the beneficiaries under the trust, if any. *Carswell* v. *Creswell*, 217 N. C. 40, 46.

Respondents fail to discuss or distinguish these most important and controlling North Carolina cases.

The North Carolina decisions cited in respondents' brief (p. 11) hold that a remainderman is not entitled to possession until the death of the life tenant and is therefore under no legal obligation to sue at an earlier date, although he has the right to invoke the aid of the court at any time to prevent or remedy a violation of the trust. These cases are not applicable, however, where the remaindermen voluntarily transferred their interest. The remaindermen here took action. So did the life tenant. If the transfer of the stock and the disposition of the proceeds of sale constituted a breach of trust and gave rise to a constructive trust impressed upon the stock in the hands of the purchasers, it took place in 1923 when they acquired it and limitations began to run in that year (R. 291-292).

In *Muse* v. *Hathaway,* 193 N. C. 227 (1927), a case decided later than any case cited by respondents, the Court says (p. 230), "The life interest does not prevent the statute from running."

Respondents also failed to discuss and distinguish *Edwards* v. *Lemmond,* 136 N. C. 329, supporting petitioners' position that this action is barred against the petitioning executors.

V.

Discussing the liability of the defendant corporation, respondents (Brief, p. 11) state that the statute relied upon by petitioners is inapplicable, indicating that the stock in question was held in the name of the decedent.

Actually, the stock in question was not held in the name of the decedent but had been transferred March 12, 1921,

into the name of the Executors and Trustees (R. 39). The statute was, therefore, applicable and the cases relied upon by respondents inapplicable.

Finally, it is significant that not once do respondents attempt to point out any respects in which Judge SOPER's opinion does not correctly set forth the applicable North Carolina law which should have been followed by the federal courts in this case where jurisdiction is based on diversity of citizenship. Neither do they attempt to distinguish the North Carolina decisions therein cited and strongly relied on by petitioners.

CONCLUSION

The petition should be granted.

Respectfully submitted,

LEE MCCANLISS,
Attorney for Petitioners.

B. S. WOMBLE, Winston-Salem, N. C.,
C. CLIFFORD FRAZIER, Greensboro, N. C.,
RUSSELL M. ROBINSON, Greensboro, N. C.,
MARION W. SMITH, New York, N. Y.,
Of Counsel.